

EXHIBIT A

EMAIL CORRESPONDENCE

From: [Lauren Myers](#)
To: [Cumming, Gregory \(ENRD\)](#)
Cc: [Randy Mastro](#); [Craig Carpenito](#); [Jessica Benvenisty](#); [Howard, Shari \(ENRD\)](#); [Silagi, Alex \(USANJ\)](#); [Cynthia Stroman](#); [Peltz, Samantha \(ENRD\)](#)
Subject: [EXTERNAL] RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)
Date: Friday, September 15, 2023 11:01:42 AM
Attachments: [image001.png](#)
[Dkt. 23 - September 15, 2023 - Letter from R. Mastro.pdf](#)

Please see attached a copy of our as-filed letter.

Lauren Myers

T: 212.790.5379 | E: LMyers@KSLAW.com

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From: Lauren Myers
Sent: Friday, September 15, 2023 10:52 AM
To: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi, Alex (USANJ) <Alex.Silagi@usdoj.gov>; Cynthia Stroman <CStroman@KSLAW.com>; Peltz, Samantha (ENRD) <Samantha.Peltz@usdoj.gov>
Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Greg - We are going to file a letter with the Court setting forth our position and then the government can file a letter setting forth their position.

Lauren Myers

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From: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Sent: Friday, September 15, 2023 10:38 AM
To: Lauren Myers <LMyers@KSLAW.com>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi,

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Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Lauren,

Thanks for your response. Could you please clarify Plaintiff's intentions as to next steps? As I noted in my email from Tuesday, and acknowledging that it does not presently appear that we will be able to reach agreement on a proposed schedule, we believe an appropriate next step would be for the Parties to prepare a joint status report setting out the Parties' respective positions as well as proposing dates for a status conference that we can get on file by the middle of next week. We are happy to prepare an initial draft of the JSR if this approach is acceptable to you. Please let us know as soon as possible, and ideally by the end of the day today, how you would like to proceed.

Greg

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From: Lauren Myers <LMyers@KSLAW.com>

Sent: Friday, September 15, 2023 10:22 AM

To: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>

Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi, Alex (USANJ) <ASilagi@usa.doj.gov>; Cynthia Stroman <CStroman@KSLAW.com>; Peltz, Samantha (ENRD) <Samantha.Peltz@usdoj.gov>

Subject: [EXTERNAL] RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Hi Greg,

Thanks for the response. We seem to be at an impasse on the deadline to produce the administrative record and the summary judgment schedule. We will seek the Court's intervention.

Regards,
Lauren

Lauren Myers

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From: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>

Sent: Tuesday, September 12, 2023 12:15 PM

To: Lauren Myers <LMyers@KSLAW.com>

Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi, Alex (USANJ) <Alex.Silagi@usdoj.gov>; Cynthia Stroman <CStroman@KSLAW.com>; Peltz, Samantha (ENRD) <Samantha.Peltz@usdoj.gov>

Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

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Lauren,

Thank you for your response. First, while we do not intend to notice our appearances today, we are happy to do so promptly once we finish our ongoing discussion of the schedule. Second, while we appreciate your desire to move the case forward expeditiously, we cannot agree to an October 17 date for production of the administrative record. As we've noted, we believe our proposed date of November 17 is reasonable and in keeping with the schedules mandated by other courts. We are happy to discuss potential production of a draft index in the hopes of limiting any disputes about the contents of the record, but do not anticipate being able to do so by late September. Third, we do not believe concluding merits briefing by the end of the year is reasonable or necessary, given the project is presently not projected to start until May; nonetheless, we are happy to discuss timing of a schedule that would conclude briefing at least two months in advance of that date. We also do not believe simultaneous cross-motions are helpful to the Court; instead, and as discussed, we believe a four-round briefing schedule is preferable. We are happy to discuss ways to streamline the process within that context, however.

Finally, we are tentatively available for a status conference on: September 19-21, October 3-5, and October 11-12. Assuming the Parties are not able to reach agreement on a schedule, we also believe our filing should include our respective proposals, so the Court is informed about our varying positions before the hearing. Please let us know your thoughts.

Greg

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From: Lauren Myers <LMyers@KSLAW.com>

Sent: Monday, September 11, 2023 11:27 AM

To: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>

Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi, Alex (USANJ) <ASilagi@usa.doj.gov>; Cynthia Stroman <CStroman@KSLAW.com>

Subject: [EXTERNAL] RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Counsel,

We are writing to follow up on our calls on August 22 and September 7. We appreciate that we all want to get this matter resolved quickly and propose the following steps to begin moving things toward resolution.

First, we request that you send us proposed dates for a status conference and enter notices of appearance by tomorrow, September 12. As you know, Judge Martinotti issued an order on July 26 directing the parties to propose dates for a status conference to be held within 30 days of Defendants' appearance. It is our understanding that counsel has been assigned for over a month; the fact that no appearances have been entered has unnecessarily delayed the setting of a status conference.

Second, we cannot accept your proposal that you should have until November 17 to produce the administrative record (AR)—nearly four months after this case was first filed. We therefore formally request that it be produced no later than October 17, and ask you to promptly confirm that you agree to that date. As you are aware, this case was filed on July 21; the proposed timeline would mean it takes longer to produce the record than the time it took the FHWA to prepare the Final FONSI after it issued the Draft FONSI. Additionally, we ask that, as a first step, you produce a complete AR index by September 29. This will help us determine whether items may be missing or incomplete and will expedite any objection/supplementation period. We are happy to discuss other ways to facilitate production of the AR.

Third, we ask that we set dates for summary judgment briefing. As we have discussed—and to our understanding, agreed—prompt briefing and argument of cross-motions for summary judgment should allow the efficient resolution of this APA case without the need for a motion for preliminary injunction or other time-consuming motions practice. Briefing should be completed by the end of the calendar year. We are open to discussing options that would meet that timeline. One option we would propose is that briefing begin in October with the parties exchanging simultaneous cross motions for summary judgment and simultaneous oppositions, and with both sides reserving the right to seek leave of court to submit replies if new issues are raised in opposition briefs.

Please respond by Wednesday, September 13 to these proposals. Also, please let us know your availability for a status conference with the court later in September.

Sincerely,
Lauren

Lauren Myers

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From: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Sent: Tuesday, August 29, 2023 4:54 PM
To: Lauren Myers <LMyers@KSLAW.com>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>; Silagi, Alex (USANJ) <Alex.Silagi@usdoj.gov>
Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

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Lauren,
Are Plaintiffs available for a follow-up call next Thursday, September 7 (ideally after 2pm)?
Thanks.

Greg

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From: Lauren Myers <LMyers@KSLAW.com>
Sent: Monday, August 14, 2023 2:28 PM
To: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>
Subject: [EXTERNAL] RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Thanks, Greg. I will send a Microsoft Teams invite to this group.

Lauren Myers

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From: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Sent: Monday, August 14, 2023 2:02 PM
To: Lauren Myers <LMyers@KSLAW.com>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>
Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

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Lauren,
Thanks. 3pm on 8/22 works for us.

Greg

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From: Lauren Myers <LMyers@KSLAW.com>
Sent: Monday, August 14, 2023 1:49 PM
To: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>
Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>
Subject: [EXTERNAL] RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Hi Greg,

We are available on Tuesday (8/22) any time after 12 pm. Let us know if that works.

Thanks,
Lauren

Lauren Myers

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From: Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>

Sent: Monday, August 14, 2023 1:01 PM

To: Lauren Myers <LMyers@KSLAW.com>

Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>; Howard, Shari (ENRD) <Shari.Howard@usdoj.gov>

Subject: RE: New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

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Lauren,

Thanks for reaching out. Unfortunately, we aren't available either of the days/times you suggested. Could you please let us know if you have availability early the following week?

Greg

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From: Lauren Myers <LMyers@KSLAW.com>

Sent: Monday, August 14, 2023 11:47 AM

To: Tardiff, Kristine (USANH) <KTardiff@usa.doj.gov>; Cumming, Gregory (ENRD) <Gregory.Cumming@usdoj.gov>

Cc: Randy Mastro <RMastro@KSLAW.com>; Craig Carpenito <CCarpenito@KSLAW.com>; Jessica Benvenisty <JBenvenisty@KSLAW.com>

Subject: [EXTERNAL] New Jersey v. US DOT et al., 2:23-cv-03885 (DNJ)

Counsel,

We represent New Jersey in the above captioned matter. We received your contact information from John Ruymann and understand you will be representing one or all of the defendants. We would like to have a call to discuss next steps and deadlines in this case. We are available on Thursday 8/17 from 2-3 pm or Friday 8/18 from 12-2 pm. Please let us know if either of those windows work for you.

Thanks,
Lauren

Lauren Myers

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